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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 273

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, MEMPHIS UNION STATION COMPANY, AND UNION RAILWAY COMPANY, *Petitioners,*

v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, and RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE RESPONDENT CITY OF MEMPHIS, TENNESSEE IN OPPOSITION.

Respondent respectfully submits that the petition presents no issue warranting consideration by this Court; that the judgment of the court below is correct; and that the Petition for a writ of certiorari should be denied.

Opinions Below

The opinion of the court below is not yet reported and is reproduced as Appendix D, pages 36a-50a, to the petition for a writ of certiorari. The district court opinion, which it affirms, is reported at 230 F. Supp. 456 and is reproduced as Appendix B, pages 7a-25a, to the petition.

Jurisdiction

The judgments of the court below were entered March 31, 1966. Petition, pp. 51a-55a. The petition for a writ of certiorari was filed June 21, 1966. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

Questions Presented

Petitioners, the Louisville and Nashville Railroad Company, Missouri Pacific Railroad Company and Southern Railway Company, after more than half a century of service in the transportation of interstate passengers to and from Memphis, Tennessee, via the Memphis Union Station Company, which they own, together with the St. Louis Southwestern Railway Company, on April 1, 1964, ceased using the terminal building and the appurtenant rail lines without having obtained authorization for the abandonment from the Interstate Commerce Commission. Memphis Union Station Company thereafter conducted no operations; two of the other railroads, MoPac and Southern operated their passenger trains to and from reopened passenger terminals, and the third railroad, the L&N operated over the tracks of the Illinois Central Railroad Company and entrained and discharged passengers at the terminal of that railroad. The two principal questions, as posed by the court below (Petition, pp. 43a-44a) were:

> (1) Was the trackage of the Memphis Union Station which was abandoned by appellants in 1964 a "line of railroad" within the meaning of Section 1(18) [of the Interstate Commerce Act, 49 U. S. C. 1 (18)] so as to require ICC approval prior to abandonment?
>
> (2) Where at least one of the appellants entered into a trackage use agreement with another railroad in order to operate from alternate facilities, did such an agreement require prior ICC approval under Section 5(2)

and 5 (4) [of the Interstate Commerce Act, 49 U. S. C. 5(2) and 5(4)]?

On complaint of the Interstate Commerce Commission, the district court answered both of these questions affirmatively, and the court below, on appeal, affirmed.

Statutes Involved

The relevant statutory provisions, 49 U. S. C. 1(18)-(20) & (22) and 49 U. S. C. 5(2), (4) & (8), are set out in Appendix A, pages 1a-6a, to the petition for a writ of certiorari.

Statement

There is no dispute as to the facts, and we accept as substantially correct the petitioners' summary, at pages 3-9 of the petition for a writ of certiorari, their statement being a paraphrase of that of the court below. Petition, pp. 39a-43a.

Argument

This case presents no substantial question warranting consideration by this Court. Whether cessation of operations over the considered tracks required advance authorization by the Interstate Commerce Commission as an abandonment of line of railroad was a matter well within the competence of the court below, as well as the district court before it, to determine, and no occasion is presented by the petition for a writ of certiorari for plenary review by this Court. *Jay Street Connecting Railroad, et al.* v. *Meyers, et al.*, 288 F. 2d 356 (2d Cir. 1961), cert. den., 368 U. S. 828; *Meyers, et al.* v. *Famous Realty, Inc., et al.*, 271 F. 2d 811 (2d Cir. 1959), cert. den., 362 U. S. 910. The courts' decision on that issue, as well as on the attendant question whether the trackage agreement providing for service thereafter to and from the terminal of another railroad required Commission approval, accorded with the decisions of this Court, *Thompson* v. *Texas Mexican R. Co.*, 328 U. S.

134; *Smith* v. *Hoboken R. Co.*, 328 U. S. 123; *Piedmont, etc. Ry. Co.* v. *I.C.C.*, 286 U. S. 299; *Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331, as they did with those of the Commission. *Boston Terminal Co. Reorganization*, 312 I. C. C. 373; *Construction by Cincinnati Union Term. Co.*, 138 I. C. C. 297.

1. Section 1(18) of the Interstate Commerce Act declares that "no carrier by railroad subject to this part shall abandon all or any portion of a line or railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment." That the Memphis Union Station Company and the proprietary railroads are carriers by railroad under Part I of the Interstate Commerce Act is beyond doubt, and their abandonment of all or any portion of a line of railroad, or the operation thereof, clearly falls within the requirement of section 1(18) unless within the exemption of section 1(22). That section 1(22) permits abandonment without Commission authorization of "spur, industrial, team, switching or side tracks, located . . . wholly within one State." "It is clear that the [track] here in question is not a track of this character." *Alabama Ry.* v. *Jackson Ry.*, 271 U. S. 244, 249.

The tracks in question, although admittedly of limited length, comprise the entire system of lines of the Memphis Union Station Company. One or more of them necessarily must be deemed to be the line of railroad of that carrier, no matter how subordinate others of the tracks might be. Moreover, one or more of the tracks afford the only connection between the terminal building of the Memphis Union Station Company and the tracks of the proprietary railroads. They are "the sole terminal facilities held out to the public for access to the main line. So long as these tracks are impressed with such an additional function they

are, for purposes of § 1(18)-(22), inseparable from the main lines and they may not be abandoned without an I. C. C. certificate of public convenience and necessity." *Myers* v. *Jay Street Connecting Railroad*, 262 F. 2d 676, 678 (2d Cir. 1959).

If, as we maintain and the court below found, the Memphis Union Station Company may not discontinue operations over its tracks and abandon them without Commission authorization, neither may the proprietary railroads, which have operated over the tracks pursuant to trackage agreements, the most recent of which was approved by the Commission in Finance Docket No. 21933, *Memphis Union Station Co.—Extension of Operating Agreement*, on April 19, 1962. Commission authorization must be secured before the parties can desert the tracks. *Thompson* v. *Texas Mexican R. Co., supra; Smith* v. *Hoboken R. Co., supra.*

The court below, at page 49a of the Petition, properly noted:

> Trackage at the Memphis Union Station which had previously been used for continuous railroad passenger service in interstate commerce was a part of several national railroad systems. It was created, as this record clearly shows, at great expense. It is properly termed, as the District Judge held, a subject of national concern. We do not think that Congress intended such facilities to be exempted from regulation.

The effect of the railroads' unilateral action, consummated without Commission authorization, quite obviously is to leave interstate travelers scattered at several terminals within Memphis, without adequate provision having been made for their transfer. *Cf. Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U. S. 77. Moreover, as the district court observed, at page 11a of the Petition, "Shortly after the termination of operations at Union Station, 120 of its em-

ployees were discharged, of whom about 75 have not obtained other employment." *Cf., Interstate Commerce Commission* v. *Railway Labor Assn.*, 315 U. S. 373.

2. The commencement of operations by the Louisville and Nashville Railroad Company over the tracks of the Illinois Central Railroad Company, to and from the latter's passenger terminal, pursuant to an agreement negotiated between these two carriers, required Commission authorization under section 5(2) of the Interstate Commerce Act, unless such operations were limited to the use of "spur, industrial, team, switching, or side tracks." 49 U. S. 1(18). As the rail lines appurtenant to the passenger terminal of the Illinois Central Railroad Company are no more within the exemption than are those of the Memphis Union Station Company, for the reasons previously discussed, the L&N joint use of them without approval of the Commission was violative of the law. 49 U. S. C. 5 (4).

A great tragedy struck the City of Memphis and adjacent areas when the petitioner railroads unauthorizedly abandoned the Union Station on April 1, 1964. Southern returned to its Lauderdale Freight Yards and MoPac removed itself to its freight yards on West Calhoun. Both of these railroads had found these yards unfit for passenger service when they moved from them in 1912 to the Union Station.

The L&N in its unauthorized move took refuge in the Central Station on South Main. We now find these railroads scattered over the city. The antiquated locations of the Southern and MoPac could offer no adequate and decent facilities to passengers. While the Central Station provides reasonably good accommodations to passengers, due to the widely separated locations of these railroads, passengers cannot make proper connections on time. Havoc and chaos have been created by the unauthorized move on

the part of the petitioners to those desiring transportation by rail.

The City of Memphis is known as the capital of the Mid-South. It ranks 20th in population in our nation. It serves a metropolitan area of approximately 800,000 people and approximately 1.2 million in the surrounding areas. Thus, by illegal abandonment of the Union Station the petitioners, instead of helping a great and rapidly-growing metropolis, have designedly done their best to return our transportation system to the horse and buggy era.

Conclusion

For the foregoing reasons, it is respectfully submitted that the Petition presents no issue warranting consideration by this Court; that the judgment of the court below is correct; and that the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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